SUPREME COURT, U.S.
FILED
AUG 22 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 431

OCTOBER TERM 1968

HERMAN W. BECKER,
Appellant

v.

COMMONWEALTH OF VIRGINIA,
Appellee

Appeal from the Supreme Court of Appeals of Virginia—at Richmond

JURISDICTIONAL STATEMENT

Submitted by:
HERMAN W. BECKER
Appellant
4637 Valley Forge Lane
Virginia Beach, Virginia

WILLIAM E. CULVERHOUSE and
GARLAND M. LAYTON
Attorneys for Herman W. Becker
P. O. Box 5211, Bayside Station
Virginia Beach, Virginia

PRINTED BY TEAGLE & LITTLE, INC., NORFOLK, VA.

INDEX

	Page
JURISDICTIONAL STATEMENT	1
QUESTIONS PRESENTED	4
STATEMENT OF FACTS	5
PRESENTATION OF SUBSTANTIAL GROUNDS	7
APPENDIX	1a

TABLE OF CITATIONS

Deloach v. *Rogers* C.A. Ga. 1959, 268 F.2d 928	2
Hague v. *Committee for Industrial Organization* N.J. 1939, 59 S.Ct. 954	2
Hammerstein v. *Superior Court of Cal., in and for Los Angeles County* Cal. 1951, 71 S.Ct. 521	2
Horwitt v. *Horwitt* 90 F.Supp. 528	2
Local 33B. United Marine Division of Intern. Longshoremen's Ass'n (A.F.L.) v. *Battle* D.C. Va. 1951, 101 F.Supp. 650, 72 S.Ct. 178	2
Miller v. *Schoene* Va. 1928, 48 S.Ct. 246	2
Mundy Motor Lines v. *DuPont* 199 Va. 933	8
Peacock v. *Commonwealth* 200 Va. 464	8
Rescue Army v. *Municipal Court of Los Angeles* 331 U.S. 549	7
Riggan v. *Virginia* 384 U.S. 152	9
Winters v. *People of State of N. Y.* N. Y. 1948, 68 S.Ct. 665	2

STATUTES

Code of Virginia 18.1-319	2,4,6
28 U.S.C. 1257(2)	4

CONSTITUTION

Fourteenth Amendment, U. S.	4,6
Sixth Amendment, U. S.	4,9

IN THE

Supreme Court of the United States

No. _____

OCTOBER TERM 1968

HERMAN W. BECKER,
Appellant

v.

COMMONWEALTH OF VIRGINIA,
Appellee

Appeal from the Supreme Court of Appeals of Virginia—at Richmond

JURISDICTIONAL STATEMENT

Now comes the Appellant, Herman W. Becker, and sets forth his Jurisdictional Statement as follows, to-wit:

There are no official or unofficial reports of opinion delivered in the courts below.

This is an Appeal to the Supreme Court of the United States from the final order of the Supreme Court of Appeals of Virginia affirming the judgment of conviction rendered by the Circuit Court of the City of Virginia Beach, Virginia, on the 15th day of November, 1967, and rejecting and refusing appellant's writ of error

and supersedeas, said final order being entered herein on April 24, 1968. Notice of Appeal was filed in the Circuit Court of the City of Virginia Beach on July 23, 1968.

This Appeal is taken pursuant to and jurisdiction is conferred by 28 U.S.C. 1257 (2).

The following cases sustain the jurisdiction conferred by the aforesaid statute:

Winters v. *People of State of N. Y.*, N. Y. 1948, 68 S.Ct. 665

Deloach v. *Rogers*, C.A. Ga. 1959, 268 F.2d 928

Miller v. *Schoene*, Va. 1928, 48 S.Ct. 246

Local 33B. United Marine Division of Intern. Longshoremen's Ass'n (A.F.L.) v. *Battle*, D.C. Va. 1951, 101 F.Supp. 650, 72 S.Ct. 178

Horwitt v. *Horwitt*, 90 F.Supp. 528

Hammerstein v. *Superior Court of Cal., in and for Los Angeles County*, Cal. 1951, 71 S.Ct. 521

Hague v. *Committee for Industrial Organization*, N. J. 1939, 59 S.Ct. 954

Appellant was convicted of violating Section 18.1-319 of the Code of Virginia, as Amended 1950, Vol. 4, at page 297:

"18.1-319. Betting on games, races, etc.—No person shall:

(1) Occupy any room, shed, tenement or building, or any part thereof, or any place upon any grounds, with books, apparatus or paraphernalia for the purpose of recording or registering bets or wagers or of selling or making books, pools or mutuals upon the result of any game, athletic contest or any trial of speed or power of endurance of animals or beasts,

(2) Being the owner or lessee or occupant of any room, tent, tenement, shed, booth or building or part thereof, knowingly permit the same to be used or occupied for any such purpose, or therein keep, exhibit or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools or mutuals,

(3) Become the custodian or depository for gain, hire or reward of any money, property or thing of value bet or wagered or to be wagered or bet contrary to the provisions of this section,

(4) Receive, register, record, forward or purport or pretend to forward to or for any game, athletic contest or any race course any money, thing or consideration of value offered for the purpose of being bet or wagered upon any game or athletic contest or the speed or endurance of any animal or beast,

(5) Occupy any place or building or part thereof with books, papers, apparatus or paraphernalia for the purpose of receiving or pretending to receive, recording, registering or forwarding, or pretending or attempting to forward, in any manner whatever, any money, thing or consideration

of value bet or to be bet contrary to the provisions of this section, or

(6) Aid, assist or abet at any race track or place in any manner in any of the acts forbidden by this section.

Any person violating the provisions of this section shall be fined not less than two hundred nor more than one thousand dollars and be imprisoned not less than thirty days nor more than ninety days.

But nothing in this section shall be construed to prevent agricultural associations and riding and driving clubs or associations from offering a purse or premium at such trials of speed of animals or beasts as may be held by them."

QUESTIONS PRESENTED

1. Whether Section 18.1-319, Code of Virginia, as Amended, 1950, the statute under which appellant was charged, is so vague, indefinite and ambiguous as to be repugnant to and in violation of the appellant's rights as guaranteed under the Fourteenth Amendment, Section One of the United States Constitution.

2. Whether evidence of statements made by the appellant under examination after arrest, without being advised of rights to remain silent and right to counsel, introduced in the trial court, was in violation of appellant's rights as guaranteed under the Sixth Amendment of the United States Constitution.

3. Whether information from a known gambler that he had gambled with appellant in the past and

observations by police of appellant going to various public places and returning to his home was sufficient probable cause for the issuance of a search warrant and subsequent search and seizure as protected by the Fourteenth Amendment, Section One of the United States Constitution.

STATEMENT OF FACTS

On July 22, 1967, C. R. Weast, a member of the Vice Squad of the Virginia Beach Police Department, appeared before Alvin L. Rodgers, Justice of the Peace for the City of Virginia Beach and made affidavit for a warrant to search the premises ". . . at or near 4639 Virginia Beach Boulevard . . ." in Virginia Beach in connection with the alleged possession by Herman Becker of ". . . number plays or slips and any paraphernalia used in number plays (and) (or) used in betting on sporting games and any other items used for illegal gambling . . ." The probable cause for the issuance of said warrant being ". . . because information from known gambler and observation by Sgt. Weast and said informant has associated with and gambled with the above subject . . ."

Pursuant to Sergeant Weast's affidavit, the Justice of the Peace issued the search warrant and at approximately twelve-thirty P.M. on the same day, police officers Warren L. Grant, E. G. Casey and C. H. Harris arrived at the appellant's home. Detective Casey went to the rear of the house and Detectives Grant and Harris went to the front and rang the doorbell. Detective Harris testified (Tr-125) that Mr. Becker said "Yeah, what do you want?" Detective Harris informed him they were police officers and Mr. Becker said, "I will be right with you." A minute later they heard the commode flush and the appellant opened the door.

Upon gaining entrance, the search warrant was handed the appellant and the officers made a search of the house. During the search they seized numerous newspapers, baseball and football schedules, newspaper clippings, blank pieces of paper, and a small pocket telephone directory. The officers testified that they did not know that these items were used for gambling (Tr-175, 183, 193) or that they could be used for purposes other than gambling (Tr-189, 191, 193) or that they didn't know what the items were used for at all (Tr-83, 140, 158, 175, 191, 192). While making their search, the officers testified that the telephone rang approximately forty times in an hour period (Tr-134).

The appellant was then arrested and charged with occupying a place or home and having in his possession books, papers, apparatus or paraphernalia for the purpose of betting or receiving bets, in violation of Title 18.1-319, Code of Virginia, as Amended 1950. He was then taken to the First Precinct of Virginia Beach, where he was questioned by Detective Sergeant Weast.

Prior to trial on the merits, the appellant, by counsel, moved the court to quash the warrant on the grounds that the statute was so vague and indefinite as to violate the appellant's rights guaranteed by the Fourteenth Amendment of the United States Constitution (Tr-4, 5). The Trial Court overruled the motion (Tr-20), to which the appellant excepted (Tr-20), and later raised this federal question by his assignment of error Number One (1), to the Supreme Court of Appeals of Virginia.

Appellant then moved the Trial Court to quash the warrant on the grounds that there was insufficient probable cause for the issuance of the search warrant, thus violating appellant's rights guaranteed under the Fourteenth Amendment of the United States Constitution

(Tr-56). The Trial Court overruled the motion and appellant noted his exception (Tr-75). Appellant raised this federal question in his assignment of error Number Five (5) to the Supreme Court of Virginia.

During the trial on the merits, the Commonwealth, through testimony of Detective Weast, introduced evidence of statements made by appellant after his arrest (Tr-166, 170). Appellant, by counsel, objected to this testimony (Tr-166) and the Trial Court overruled the objection on the grounds that this was a misdemeanor case and that appellant had no right to be advised of counsel or to remain silent (Tr-169). Appellant, by counsel, noted his exception (Tr-170) and by assignment of error Number Fourteen (14) to the Supreme Court of Virginia.

PRESENTATION OF SUBSTANTIAL GROUNDS

Appellant understands that one of the purposes of this Statement is to prevent frivolous appeals. As stated in the case of *Rescue Army* v. *Municipal Court of Los Angeles,* 331 U.S. 549, the Court should follow a "policy of strict necessity in disposing of constitutional issues." The Court has listed a series of rules to be followed in determining whether constitutional questions were sufficiently substantial as to require plenary consideration, they being:

(A) constitutional issues affecting legislation will not be determined in friendly, nonadversary proceedings;

(B) in advance of the necessity of deciding them;

(C) in broader terms than are required by the precise facts to which the ruling is to be applied;

(D) if the record presents some other ground upon which the case may be disposed of;

(E) at the instance of one who fails to show that he is injured by the statute's operation, or who has availed himself of its benefits;

(F) or if a construction of the statute is fairly possible by which the question may be avoided.

It is the appellant's contention that the questions here presented are not barred by any of the above rules. The Supreme Court of Appeals of Virginia, in denying appellant's Writ of Error, refused to decide the federal questions. It merely upheld the Trial Court's ruling. No Virginia case can be found where the statute under which appellant was charged has been interpreted.

In *Peacock* v. *Commonwealth,* 200 Va. 464, the Court cited the case of *Mundy Motor Lines* v. *DuPont,* 199 Va. 933, at pages 937 and 938, where the following was quoted with approval:

> "If the terms in which it (a statute) is couched be so vague as to convey no definite meaning to those whose duty it is to execute it, either ministerially or judicially, it is necessarily inoperative."

In the instant case, not only is the statute vague to the appellant, but it was also vague to the police officers who searched and seized items from the appellant's home. Throughout their testimony (Tr-83, 104, 110, 112, 140) the officers stated that the items seized pursuant to this statute and introduced into evidence had no meaning to them.

The appellant's contention that he was entitled to be advised of his rights to counsel and the right to remain silent certainly deserves plenary consideration. The Sixth Amendment of the United States Constitution provides, in fact, that ". . . In all criminal prosecution . . ." the accused shall enjoy the right to counsel. The appellant was definitely charged, convicted and sentenced under a criminal statute. The question, therefore, of whether an individual shall be deprived of his liberty and property without right to assistance of counsel is definitely substantial.

The question of whether there was probable cause for the issuance of the search warrant is also substantial. In the recent case of *Riggan* v. *Virginia,* 384 U.S. 152, the Supreme Court of the United States decided this very same question in reversing the Virginia Supreme Court. Thus, where the personal liberty of the appellant and the privacy of his home and papers are in danger, and where he has exhausted all state remedies to protect those rights, it is certainly not a frivolous question to ask the Supreme Court of the United States to determine whether those rights have been violated.

Respectfully submitted,

HERMAN W. BECKER,
Appellant

WILLIAM E. CULVERHOUSE and
GARLAND M. LAYTON
Attorneys for Herman W. Becker
P. O. Box 5211, Bayside Station
Virginia Beach, Virginia

APPENDIX

ORDER

IN THE SUPREME COURT OF APPEALS HELD AT THE SUPREME COURT OF APPEALS BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY, THE 24th DAY OF APRIL, 1968.

The petition of Herman Becker for a writ of error and supersedeas to a judgment rendered by the Circuit Court of the City of Virginia Beach on the 15th day of November, 1967, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

(s)H. G. TURNER

Clerk

LIBRARY
PREME COURT, U. S.

FILED
NOV 29 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 431

HERMAN W. BECKER,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

Appeal from the Supreme Court of Appeals of Virginia

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO AFFIRM

ANDRE EVANS
Attorney for the Commonwealth of Virginia
for the City of Virginia Beach

JOSEPH L. LYLE, JR.
Assistant Attorney for the Commonwealth
of Virginia for the City of Virginia Beach

Princess Anne Station
Virginia Beach, Virginia 23456

PRINTED BY TEAGLE & LITTLE, INC., NORFOLK, VA.

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
PRIOR PROCEEDINGS	2
STATEMENT OF FACTS	4
QUESTIONS PRESENTED	5
ARGUMENT	5
CONCLUSION	9

TABLE OF CITATIONS

Cases

Giordenello v. *United States*, 378 U.S. 108 8

Jones v. *United States*, 362 U.S. 270 9

Riggan v. *Virginia*, 384 U.S. 152 7

United States v. *Petrillo*, 332 U.S. 1, 7 6

United States v. *Rumely*, 345 U.S. 41, 47 6

United States v. *Ventresca*, 380 U.S. 102 8

Other Authorities

Code of Virginia (1950) as amended:
Section 18.1-319 2,5

The Constitution of the United States:
The Fourteenth Amendment 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No.

HERMAN W. BECKER,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

Appeal from the Supreme Court of Appeals of Virginia

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO AFFIRM

PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated November 1, 1968, the Attorney General of Virginia was requested to file a response to the appeal taken from an order of the Supreme Court of Appeals of Virginia in the instant case. By letter of November 6, 1968, the Attorney General of Virginia requested that the Commonwealth's Attorney for the City of Virginia Beach, Virginia file a response in this matter. It is in accordance

with these requests that the within response is filed. The appellee, believing that the matters set forth herein will demonstrate the lack of substance in the question sought to be presented by this appeal, files this statement in opposition to the appellant's jurisdictional statement and includes her motion to affirm the judgment of the court below upon the ground that the questions upon which the decision of this cause depends are so unsubstantial as to obviate further argument.

PRIOR PROCEEDINGS

On November 15, 1967, the appellant was convicted in the Circuit Court for the City of Virginia Beach, Virginia for the violation of a misdemeanor statute proscribing gambling or the possession of gambling paraphernalia for purposes enumerated therein. The statute in question is Code of Virginia (1950) §18.1-319, which reads as follows:

> "§18.1-319. Betting on games, races, etc.—No person shall:
>
> (1) Occupy any room, shed, tenement or building, or any part thereof, or any place upon any grounds, with books, apparatus or paraphernalia for the purpose of recording or registering bets or wagers or of selling or making books, pools or mutuals upon the result of any game, athletic contest or any trial of speed or power of endurance of animals or beasts,
>
> (2) Being the owner or lessee or occupant of any room, tent, tenement, shed, booth or building or part thereof, knowingly permit the same to be used or occupied for any such purpose, or therein

keep, exhibit or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools or mutuals,

(3) Become the custodian or depository for gain, hire or regard of any money, property or thing of value bet or wagered or to be wagered or bet contrary to the provisions of this section,

(4) Receive, register, record, forward or purport or pretend to forward to or for any game, athletic contest or any race course any money, thing or consideration of value offered for the purpose of being bet or wagered upon any game or athletic contest or the speed or endurance of any animal or beast,

(5) Occupy any place or building or part thereof with books, papers, apparatus or paraphernalia for the purpose of receiving or pretending to receive, recording, registering or forwarding, or pretending or attempting to forward, in any manner whatever, any money, thing or consideration of value bet or to be bet contrary to the provisions of this section, or

(6) Aid, assist or abet at any race track or place in any manner in any of the acts forbidden by this section.

Any person violating the provisions of this section shall be fined not less than two hundred nor more than one thousand dollars and be imprisoned not less than thirty days nor more than ninety days. But nothing in this section shall be construed to

prevent agricultural associations and riding and driving clubs or associations from offering a purse or premium at such trials of speed of animals or beasts as may be held by them."

In accordance with the jury's verdict, the appellant was fined One Thousand ($1,000.00) Dollars and sentenced to thirty days in jail.

Within the time provided by state statute, the appellant applied to the Supreme Court of Appeals of Virginia for a writ of error reviewing the trial court's judgment, and, on April 24, 1968, the Supreme Court of Appeals rejected this petition. The case is now before this Court upon an appeal filed by the appellant on August 22, 1968.

STATEMENT OF FACTS

The statement of facts in appellant's brief is substantially correct. The Commonwealth, however, would also point out that the officers not only testified to the items seized, but also testified as experts as to what these items were commonly used for; namely, the odds on baseball games and what the odds were, how they were determined, and that they were commonly used for the purpose of recording bets. In addition, the officers testified that during a period of forty-five (45) minutes, the telephones rang approximately forty-one (41) times, and that the callers would ask for "Beck" (referring to the defendant) and request to place bets. (Tr. p. 108). Furthermore, Detective C. H. Harris testified that newspapers were seized which contained numerous amounts of racing information pertaining to horses (Tr. p 137) and Detective W. L. Grant testified that the newspaper headlines read, "Bookies Favor Becomes Better for

Braves" and "Betting Pool Convictions Overturned". (Tr. p. 145). There was also testimony that the defendant freely stated that he had a special source from which he got his odds, and that the defendant had also physically pointed out to Officer Weast how he listed these odds to the right of each team and actually wrote the odds down in the presence of Officer Weast. (Tr. p. 170)

QUESTIONS PRESENTED

1. Whether Section 18.1-319, Code of Virginia, as amended, 1950, the statute under which appellant was charged, is so vague, indefinite and ambiguous as to be repugnant to and in violation of the appellant's rights as guaranteed under the Fourteenth Amendment, Section One, of the United States Constitution.

2. Whether under the circumstances of this case, the statements made by appellant to police officers were voluntary.

3. Whether the information possessed by Sgt. C. R. Weast constituted probable cause for the issuance of the search warrant in the execution of which the search and seizure were conducted and made in this case.

ARGUMENT

A. §18.1-319 of the Code of Virginia (1950), as amended, is not so vague, indefinite and ambiguous as to be repugnant to and in violation of the appelant's rights as guaranteed under the Fourteenth Amendment, Section One, of the United States Constitution.

The appellant cites no applicable authority to the effect that the state statute under attack, or any similar statute, has been held to be vague, indefinite or ambigu-

ous. A reading of this statute discloses that its obvious purpose is to suppress unlawful gambling, and to allow the seizure of any equipment contemplated to be used therefor. It can hardly be seriously contended that the statute in question fails to describe the proscribed articles or that, under the evidence in this case, the articles in question were not contemplated or intended to be used for gambling purposes. The gist of the statute in question does not relate to the naked possession of the books and apparatus, but rather the purpose for which they are possessed; the evidence in the case leaves no question as to the purpose for which the defendant kept these items on hand.

This Court has often held that statutes are not automatically invalidated as vague simply because it is difficult to determine whether certain marginal offenses fall within their purview. *United States* v. *Petrillo,* 332 U.S. 1, 7, 91 L.ed. 1877, 1882, 67 S.Ct. 1538 (1947). To the contrary, the Court has quite properly sought an interpretation consistent with the validity of the legislation. *United States* v. *Rumely,* 345 U.S. 41, 47, 97 L.ed. 770, 776, 73 S.Ct. 543 (1953).

The appellant has failed to point out in what particular, if any, the Virginia statute in question is vague; a reading of the statute discloses that the proscribed conduct is clearly delineated.

B. The statements made by appellant to police officers were voluntary under the circumstances, and hence were admissible as evidence.

The appellant, on page nine of his petition, urges that the incriminatory statements made by him were, as a matter of law, inadmissible for the reason that he was

not advised of his rights prior to making such statements. This conclusion is, of course, predicated upon the theory that these statements were not voluntary.

The record contains no evidence, nor the petition any suggestion, that circumstances existed which deprived the appellant of his free will in this matter. There is no evidence that he was lacking in education or intelligence, that he was coerced or tricked by the police officers, or that in any way he was subjected to improper or coercive influences. In the absence of such evidence, the position of the appellant must rise or fall upon the premise that, *as a matter of law,* the accused in a misdemeanor case must be advised of his rights prior to making a statement to law enforcement authorities. The writer is not aware of any applicable authorities so holding, and it is significant that no such authorities are cited in the appellant's petition.

C. The police officer in question possessed sufficient information to constitute probable cause for issuance of the search warrant.

It is finally urged by the appellant that, since the search warrant in question was void for lack of probable cause for the issuance thereof, the evidence and exhibits obtained thereunder were inadmissible. In support of his position, he cites *Riggan* v. *Virginia,* 384 U.S. 152, 86 S.Ct. 1378, 16 L.ed. 431 (1966). In the *Riggan* case the affidavit for the search warrant asserted merely: "personal observation of the premises, . . ." and "information from sources believed by the police to be reliable . . ." This Court felt that these bare allegations in the affidavit left the determination of the reliability of the information up to the officer, rather than to the magistrate, in

that it asserted no facts upon which the conclusion of reliability was predicated. Like *Giordenello* v. *United States,* 378 U.S. 108, 84 S.Ct. 1509, 12 L.ed. 2d 723 (1964), the *Riggan* affidavit failed to "indicate any sources for the complainant's belief . . . ."

By contrast, the affidavit in the case at bar recites "information from known gambler, and observations by Sgt. Weast and said informant has associated with and gambled with the above subject [the appellant]."

These allegations, particularly when considered in the light of the overwhelming weight of corroborative testimony in the record, are certainly sufficient to constitute "probable cause," which, as this Court pointed out in *United States* v. *Ventresca,* 380 U.S. 102, 85 S.Ct. 741, 13 L.ed.2d 684 (1965), is a practical, rather than an abstract concept. The language of this tribunal in that case is particularly applicable here. In reviewing the line of decisions construing the Fourth Amendment as it relates to search warrants and the affidavits upon which they are based, this Court stated at 13 L.ed. 2d 689:

> "These decisions reflect the recognition that the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract. If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging

> or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting . . . Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants. *Jones* v. *United States,* supra 362 U.S. at 270, 4 L.ed.2d at 707, 78 ALR2d 233."

CONCLUSION

In conclusion, it is respectfully submitted that the questions upon which the decision of this cause depends are so unsubstantial as to obviate further argument.

Respectfully submitted,

ANDRE EVANS
Attorney for the Commonwealth of Virginia
for the City of Virginia Beach

JOSEPH L. LYLE, JR.
Assistant Attorney for the Commonwealth of
Virginia for the City of Virginia Beach

Princess Anne Station
Virginia Beach, Virginia 23456

CERTIFICATE

I, Joseph L. Lyle, Jr., Assistant Attorney for the Commonwealth of Virginia for the City of Virginia Beach, a member of the Bar of the Supreme Court of the United States and one of Counsel for appellee in the above captioned matter, hereby certify that copies of this statement of appellee opposing jurisdiction and motion to affirm have been served upon each counsel of record for the parties herein by depositing the same in the United States Post Office, with first class postage prepaid, this 27th day of November, 1968, pursuant to the provisions of Rule 33(1) of the Rules of the Supreme Court of the United States, as follows: William E. Culverhouse and Garland M. Layton, P. O. Box 5211, Bayside Station, Virginia Beach, Virginia, counsel for appellant.

JOSEPH L. LYLE, JR.
Assistant Attorney for the Commonwealth
for the City of Virginia Beach

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

BECKER v. VIRGINIA.

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA.

No. 431. Decided February 24, 1969.

PER CURIAM.

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.